STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. 24 CF 1294

MICHAEL A. ROMAN,

Defendant.

MOTION TO FILE AMICUS BRIEF
BY NON-PARTY TERPSEHORE MARAS

NOW INTO COURT comes non-party Terpsehore Maras, who, pursuant to Wis. Stat. § 809.19(7), respectfully seeks approval from this Court to file the accompanying amicus curiae brief.

Ms. Maras herein is a United States citizen, investigative journalist, and policy analyst who has reported extensively on government accountability and election-law controversies. Her interests lie in defending the notions of constitutional due process, equal protection, and public confidence in impartial justice.

Ms. Maras further states that the amicus curiae brief she seeks to file will materially assist the Court by providing evidentiary context that is presently absent from the record. Specifically, the prosecution of the defendant cannot be fully or fairly evaluated without reference to contemporaneous materials produced by politically aligned organizations and advisory bodies during the 2020 election cycle. Attached to the proposed amicus brief is a document titled Election Coup 2020, prepared under the auspices of the AFL-CIO, American Federation of Teachers President Randi Weingarten, and then–DNC Chair Tom Perez, together with their respective election task forces. This document, created and circulated prior to

November 3, 2020, outlines a coordinated legal and logistical strategy for contesting election outcomes and advancing contingency slates of electors. It explicitly references the same operative provisions of the pre-2022 Electoral Count Act ("ECA") that form the basis of the defendant's alleged conduct. The AFL-CIO materials demonstrate that, prior to the 2020 election, democrat-aligned political operatives and legal advisors and after the 2020 elections, republican-aligned political operatives and legal advisors *both* interpreted the ECA's ambiguous "multiple returns" clause to authorize contingency elector actions in the event of disputed certifications. This shared understanding refutes any inference of fraudulent purpose. This evidence demonstrates that politically aligned entities—specifically, the AFL-CIO task force and related advisors—planned for alternate slates of electors in specific states before the 2020 elections under the same statutory theory yet have faced no investigation or prosecution.

At the same time, the Department of Homeland Security, acting through its Cybersecurity and Infrastructure Security Agency ("CISA"), implemented a program known as the "Sunrise Zoom Call" moderation initiative in coordination with private social-media platforms. That initiative actively monitored and curtailed the circulation of election-related materials and discussions—including those reflecting the same contingency-elector planning conducted by politically aligned organizations prior to the 2020 election. This targeted suppression of exculpatory context, when coupled with the exclusive prosecution of one political faction for conduct mirrored by its counterpart, constitutes a direct violation of the Equal Protection Clause and a denial of the fair, even-handed administration of justice guaranteed by the Fourteenth Amendment.

For these reasons and for all the reasons more fully set forth in the accompanying amicus curiae brief, Terpsehore Maras respectfully requests that the Court accept her brief for filing.

Dated: November 14, 2025

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I certify that service of this document on all parties and counsel of record has been effected using the Wisconsin Court System's eFiling system.

Dated: November 14, 2025

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AMICUS CURIAE BRIEF
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MAY IT PLEASE THE COURT:

Amicus curiae, Terpsehore Maras, pursuant to Wis. Stat. § 809.19(7), respectfully submits the instant non-party amicus curiae brief. For the following reasons, amicus curiae asserts this Court should dismiss the charges filed against the defendant.

I. INTRODUCTION

This Court should dismiss the forgery charges as a matter of constitutional law. First, prior to its 2022 amendment,[1] the Electoral Count Act ("ECA") was uniformly understood across both major political parties to permit the preparation and transmittal of contingent elector certificates in disputed elections. Second, Congress's own subsequent amendment of the ECA expressly acknowledged that the statute's prior language was ambiguous and in need of clarification. Third, documentary evidence—including the AFL-CIO's pre-election "Election Coup 2020" memorandum, which is incorporated herein and attached hereto as **Exhibit A**, confirms that executive leadership of the AFL-CIO, including former Head of AFL-CIO Richard Trumka, American Federation of Teachers President Randi Weingart, and then DNC Chair Tom Perez, along with other Democratic-affiliated institutions and legal advisors, operated under the same statutory interpretation and engaged in identical contingency planning, yet no comparable prosecutions ensued.

Historical precedent confirms that the submission of contingent or alternate elector certificates has long been recognized as a lawful procedural safeguard within the framework of the Electoral Count Act. In 1960, during the presidential election contest between John F. Kennedy and Richard Nixon, the State of Hawaii experienced a recount dispute that left the final result unresolved as of the date prescribed for the meeting of the Electoral College. On December 19, 1960, both

[1] See Electoral Count Reform Act of 2022, Pub. L. No. 117-328, div. P, tit. I, 136 Stat. 4459, 5233–5241 (2022) (codified as amended at 3 U.S.C. §§ 1–2, 5–22) - Congress's own legislative history admitting the prior statute was "ambiguous."

the Republican and Democratic elector slates convened and cast competing votes—the Republican slate pursuant to the Governor's initial certification for Nixon, and the Democratic slate contingently for Kennedy, pending the judicial outcome of the recount. When the recount later reversed the initial result, the Governor certified the Democratic slate retroactively, and Congress, presided over by then–Vice President Nixon, formally accepted those votes for Kennedy on January 6, 1961. No participant in that process was investigated or prosecuted; rather, the episode has been cited by courts and scholars as evidence that the casting and transmittal of contingent elector certificates in disputed elections was historically viewed as permissible under the pre-2022 Electoral Count Act. This bipartisan precedent underscores that such conduct, when undertaken in good faith amidst legal uncertainty, cannot constitutionally be recast as forgery or fraud.

When two political factions act under a shared, good faith reading of an ambiguous federal statute, the selective criminalization of only one faction's reliance on that interpretation violates both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. The Constitution does not permit the government to transform lawful reliance on statutory ambiguity into a crime for some citizens but not others.

II. INTEREST OF AMICUS CURIAE

Amicus curiae, Terpsehore Maras, is a United States citizen, investigative journalist, and policy analyst who has reported extensively on election law, federal procedure, and constitutional compliance in government operations. Her interest lies in the preservation of due process, equal protection, and the consistent application of law regardless of political affiliation.

Amicus respectfully submits that the evidentiary and contextual record before this Court is materially incomplete without reference to contemporaneous pre-election materials produced by politically aligned institutions and co-authored by AFL-CIO leadership, American Federation of Teachers President Randi Weingart, and then DNC Chair Tom Perez. These materials—circulated prior to

November 3, 2020—demonstrate that national political organizations and their legal advisors interpreted the pre-2022 ECA in the same manner as the defendant: namely, as discussing contingent elector certificates in unresolved or disputed elections. The attached Exhibit A, titled Election Coup 2020, was drafted and distributed in the summer of 2020, prior to the general election, underscoring that contingency-elector planning was viewed not as an extraordinary measure but as a routine and anticipated feature of election management.

This Court therefore cannot determine the element of criminal intent in isolation from the full context in which the defendant's actions occurred. As illustrated by Exhibit A — the document which was widely circulated prior to the elections of 2020 by AFL-CIO leadership and other Democratic operatives to "transmit contingent certificates under the ECA multiple-returns clause" if litigation remains pending on December 14. This pre-election contingency plan is identical in substance to defendant's December 14, 2020, Wisconsin certificate. The interpretation is further validated by the 1960 Hawaii precedent, where both Democratic and Republican electors submitted competing slates, accepted by Congress without objection. See 107 Cong. Rec. 288 (1961). Bipartisan reliance on the same statutory framework and historical practice forecloses any inference of fraudulent intent. The interest of amicus is thus to ensure that this Court's analysis proceeds on a constitutionally complete and evidentiary foundation, rather than on a partial record shaped by selective omission.

III. ARGUMENT

A. The Defendant's Actions Were Grounded in a Widely Shared Legal Interpretation, Negating Criminal Intent

The State's theory of criminal intent collapses under the weight of undisputed, contemporaneous evidence establishing that the defendant's actions were consistent with a widely shared and publicly documented interpretation of federal law. At the time of the conduct alleged, the pre-2022 ECA contained

ambiguous provisions concerning the handling of multiple returns or competing certifications of electors. Both major political parties, through their national committees, election task forces, and affiliated legal advisors, relied upon that ambiguity to prepare contingency elector documentation in the event of unresolved or contested results.

Documentary materials circulated by the AFL-CIO and its election-law partners—attached as Exhibit A—demonstrate that Democratic-aligned institutions anticipated and interpreted the same provisions of the pre-2022 Electoral Count Act in precisely the same manner as the defendant, notwithstanding later assertions that such an interpretation had no historical basis. Historical precedent confirms otherwise: the submission of contingent or alternate elector certificates has long been recognized as a lawful procedural safeguard within the framework of the Electoral Count Act.

In 1960, during the presidential election contest between John F. Kennedy and Richard Nixon, the State of Hawaii experienced a recount dispute that left the final result unresolved as of the date prescribed for the meeting of the Electoral College. On December 19, 1960, both the Republican and Democratic elector slates convened and cast competing votes—the Republican slate pursuant to the Governor's initial certification for Nixon, and the Democratic slate contingently for Kennedy, pending the judicial outcome of the recount. When the recount later reversed the initial result, the Governor certified the Democratic slate retroactively, and Congress, presided over by then–Vice President Nixon, formally accepted those votes for Kennedy on January 6, 1961. No participant in that process was investigated or prosecuted; rather, the episode has been cited by courts and scholars as evidence that the casting and transmittal of contingent elector certificates in disputed elections was historically viewed as permissible under the pre-2022 Electoral Count Act. This bipartisan precedent underscores that such conduct, when undertaken in good faith amidst legal uncertainty, cannot constitutionally be recast as forgery or fraud.

Exhibit A explicitly references the ECA's "multiple returns" clause and outline the legal and logistical steps necessary to advance alternate elector slates if litigation remained pending at the time of certification. The existence of such planning on both sides of the political spectrum is dispositive on the question of mens rea. A defendant cannot possess a "knowing intent to defraud" when contemporaneous actors, operating in good faith and under identical statutory language, reached the same conclusion as to what the law permitted.

This is not a matter of subjective belief or political justification—it is a matter of objective legal context. The State bears the burden of proving beyond a reasonable doubt that the defendant knew his conduct was unlawful. When the statutory framework itself was sufficiently ambiguous to require congressional revision, and when bipartisan actors interpreted it identically, that burden becomes impossible to satisfy as a matter of law. The record, viewed through the lens of due process and constitutional lenity, establishes that the defendant acted under a reasonable and historically grounded understanding of the ECA's operation. Accordingly, the element of fraudulent intent required under Wis. Stat. § 943.38(2) cannot be met, and the charges must be dismissed.

B. Relevant Documentary Evidence Has Been Suppressed.

The constitutional infirmity in this prosecution is compounded by the State's failure to acknowledge material evidence that directly negates criminal intent. The Department of Justice and its state counterpart have constructed a factual record that omits contemporaneous documentation produced by national political organizations—including the AFL-CIO's *Election Coup 2020* memorandum and related communications—demonstrating that identical "contingent elector" strategies were planned and discussed by Democratic-aligned legal teams before the 2020 election. These documents, attached as Exhibit A, are not speculative; they are verifiable publications authored by identifiable institutions and circulated publicly prior to October 1, 2020.

By excluding these materials, the State has effectively presented this Court with a one-sided historical narrative, depriving the defendant of the full constitutional context necessary to assess *mens rea*. Suppression of materially exculpatory context—whether intentional or inadvertent—violates the Due Process Clause under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The Supreme Court has long held that the government's duty to disclose favorable evidence extends not only to physical exhibits but to any information that would "undermine confidence in the outcome" of a prosecution. *Kyles v. Whitley*, 514 U.S. 419 (1995).

The omitted record here meets that standard precisely. Exhibit A demonstrates that the interpretation underlying the defendant's actions was *neither novel nor deceptive* but aligned with public and bipartisan understandings of the pre-2022 ECA. The State's failure to address or disclose such parity of conduct produces a fundamentally distorted evidentiary landscape—one that invites the Court to infer criminal purpose where none can lawfully be found.

Constitutional due process does not tolerate adjudication built upon selective evidence. A prosecution cannot be permitted to proceed on a narrative curated to exclude material facts that, if known, would render the alleged intent impossible as a matter of law. This Court therefore has both the authority and the duty to take judicial notice of Exhibit A and the surrounding record to ensure that its analysis rests on the *entire* evidentiary foundation, not a partial one crafted by omission. In doing so, the Court will uphold the principle that justice in a constitutional republic demands completeness, not convenience, in the presentation of truth.

C. The Selective and Retroactive Prosecution of Defendant Results in Constitutional Infirmity.

The State's decision to prosecute only one political faction for conduct demonstrably mirrored by its counterpart throughout history violates the Equal Protection Clause of the Fourteenth Amendment and renders this proceeding constitutionally infirm. The undisputed record—including the AFL-CIO's *Election*

Coup 2020 memorandum and related planning materials—confirms that both major political parties engaged in identical "contingent elector" preparations under the same statutory framework. Yet, only the Republican participants have been subjected to criminal indictment.

The Supreme Court has long held that selective enforcement of the criminal law, when based on impermissible criteria such as political affiliation or viewpoint, is a violation of the Equal Protection Clause. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Wayte v. United States*, 470 U.S. 598 (1985). The governing test requires proof that (1) others similarly situated have not been prosecuted for the same conduct, and (2) the differential treatment was motivated by a discriminatory purpose. Both elements are satisfied here as a matter of record.

First, the evidence attached as Exhibit A establishes that Democratic-aligned actors undertook substantially identical actions—formulating, documenting, and disseminating legal strategies for alternate elector submissions in the event of unresolved results. None have been investigated or charged. Second, contemporaneous public statements by federal and state officials, coupled with the absence of prosecutions for identical conduct across the political spectrum, demonstrate a prosecutorial policy driven by viewpoint discrimination rather than neutral law enforcement.

Equal protection demands that like cases be treated alike. Where the State exercises its prosecutorial power to punish one set of citizens for conduct tolerated in another solely on the basis of political identity, the criminal law ceases to function as a neutral instrument of justice and becomes an instrument of factional reprisal. The Constitution does not countenance such disparity. As Justice Robert Jackson observed, "the prosecutor has more control over life, liberty, and reputation than any other person in America." Robert H. Jackson, U.S. Att'y Gen., The Federal Prosecutor, Address at the Second Annual Conference of United States Attorneys (Apr. 1, 1940). That control, when wielded discriminatorily, corrodes the legitimacy of the entire system.

The Court therefore has a constitutional obligation to terminate proceedings infected by unequal enforcement. To allow this case to proceed while identical conduct remains unprosecuted on the opposite side of the political aisle would not merely tolerate selective justice—it would endorse it. Equal protection requires the dismissal of these charges to preserve both the integrity of this Court and the equal application of law upon which the Republic depends.

VI. CONCLUSION

The integrity of our constitutional order rests on a single principle: that the law must apply equally to all citizens, and that no person may be punished for conduct undertaken in good faith reliance on an ambiguous statute. The State's theory of this case collapses under its own contradictions. The same federal statute that both parties interpreted in identical fashion cannot, without violating the Constitution, be deemed criminal for one faction and lawful for another.

The evidence before this Court establishes that the pre-2022 Electoral Count Act was ambiguous by Congress's own subsequent admission; that both political parties, through their national committees and legal advisors, relied on that ambiguity in preparing contingent elector certificates; and that exculpatory evidence confirming this parity of conduct was withheld from the record. Under the Due Process Clause, no citizen may be convicted when the governing law failed to give fair notice of the line between legality and crime. Under the Equal Protection Clause, no prosecution may stand when it punishes one group for conduct mirrored by its counterpart.

To allow this case to proceed would not only perpetuate unequal justice—it would erode the public's faith that law can ever again be applied without fear or favor. The Constitution does not permit such a precedent. This Court therefore must act not as an instrument of partisanship, but as the guardian of constitutional balance.

Accordingly, amicus respectfully prays that this Court dismiss all charges with prejudice, recognizing that the rule of law is not preserved by

selective punishment but by the even-handed application of justice to every citizen, in every circumstance, without exception.

Dated: November 14, 2025

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CERTIFICATION REGARDING LENGTH AND FORM

I certify that this brief conforms to the rules contained in Wis. Stat. §809.19(8)(b), (bm), and (c). Excluding the portions of this brief that may be excluded, the length of this brief is 2,524 words as calculated by Microsoft Word.

Dated: November 14, 2025

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EXHIBIT A

The focus of the

ENTIRE AFL-CIO

at the moment is

LABOR 2020

AFTER THE ELECTION
WE WILL MOBILIZE --
TO DEFEND OUR VICTORY!
TO ADVANCE THE
LABOR MOVEMENT'S AGENDA!

Election is not 1 election, but 50 state elections.

Must be defended, state by state.

The election defense is built around SFs/CLCs.

Florida 2000 taught us - post-election battles are not legal battles, they are political battles.

Mobilization, Communications and Legal teams will be critical.

Five Phases

1. Now Through Election Day
2. Election Night Through Saturday (ish)
3. Saturday (ish) Through December 8th
4. December 9th Through January 6th
5. January 7th Through Inauguration Day

Phase One:
Now Through Election Day

AFL-CIO

Phase Two:
Election Night Through Saturday (ish)

What to Expect November 3rd to 4th

- Trump will
  - Claim victory based on early leads and call for no votes to be counted after Election Day, and/or
  - Either claim widespread fraud or focus on urban Democratic strongholds if he is close enough in their states, especially Milwaukee, Detroit and Philadelphia.
  - Encourage his supporters to "watch" election administrators counting the ballots.
- What the Trump campaign and his supporters may do:
  - Intimidation at counting locations and elsewhere
  - Lawsuits
  - Exploiting legal rules to create frivolous delays to the counting process
- This will intensify as ballots counted after Election Day will favor Biden (mail + provisional).

Strategic Considerations

- Trump's vote relative to Biden's will never be better than it will be at 10:59 when polls close on the West Coast.
- Results after that will favor Biden as the majority of the ballots remaining to be counted will be mail and provisional. This will fuel Trump's claims of fraud which will enrage his followers.
- Recent court rulings that allow ballots received after November 3rd if they are postmarked ahead of the election will be another target of fraud claims.
- Unless the election is extraordinarily close in the tipping point state, we should know the voters' choice by Saturday even though not all the ballots will have been counted.
- Arizona, Florida, Pennsylvania, Wisconsin and Michigan are most likely to be hot spots.
- PA, MI and WI have Democratic governors, aggressively anti-democratic legislatures and little or no experience with this much mail voting.
- Florida will likely be counted first.

Phase Three:
Saturday (ish) Through December 8th

Strategic Considerations I: Safe Harbor Day

- The Constitution provides that Governors have until December 8th ("Safe Harbor Day") to appoint the electors based on their certified results of the election.
- The Electoral Count Act provides that a state's choice of electors will be conclusive if two things are true:
  1. The electors are decided by a process set in state law by Nov 3 (certification by the governor except in Arizona where the secretary of state), and
  2. That state process delivers a result by December 8th ("Safe Harbor Day")

Strategic Considerations II: State Legislatures

- Article II of the Constitution provides that each state's electors shall be appointed "in such Manner as the Legislature thereof may direct."
- Since the 19th Century, that "manner" has been direct elections.
- If the results are not certified by December 8th, then the state legislature decides on a slate of electors.
- Although it has never even been attempted in American history, Trump supporters have argued that Republican state legislatures could appoint Trump electors by declaring that the certified results were poisoned by widespread fraud and use 3 USC 2 to appoint a different slate of electors
- Biden wins in Wisconsin, Pennsylvania, Michigan, North Carolina and Arizona could be threatened either way.
- Republican governors could fail to certify by December 8th to create a pretext for state legislative intervention.
- Some states have earlier state certification deadlines that Trump could attempt to exploit
- Governors cannot veto actions by state legislatures– but they are subject to judicial review by both state and federal courts.
- The current Supreme Court is likely to take a broad view of state legislative power in this context.

Phase Four:
December 9th Through January 6th

Strategic Considerations I: The Rules

- The Electoral College Formally Meets December 14th. If a state legislature takes action, there could be two Electoral College meetings that day in a state
- The New Congress Convenes a Joint Session on January 6th, 2021.
- In that session, the electoral votes are accepted and counted. Here are the potentially precarious scenarios:
  - If the count is tied (269 to 269) the House decides, but with each state casting just one vote. Today, that would mean a 26 to 24 Trump win.
  - If neither candidate has 270 electoral votes because a state doesn't send a slate, two are sent and neither is accepted, or another cause it is ambiguous whether the candidate with the majority wins or if it is sent to the House in which case it would be decided as above.

Phase Five:
January 7th Through Inauguration Day

Contingencies

- If Congress approves of Biden's election, most believe that both the Supreme Court and the military would resist any efforts to overrule that judgment
- If Congress deadlocks, the Constitution would make the House Speaker president at 1:00 January 20th , 2021 when Trump's term expires (per the Constitution).

Trump's Message Goals

- Set the stage for rejecting the results:
  - Mail ballots are Democrats' fraud
  - Millions of illegal voters
- Depress turnout
  - Your vote might not count
  - Your vote might not matter
  - Divert attention away from his record

How to Respond to Trump

- Everything he says he says because he knows he was losing
- Don't engage his arguments –
  - Debunking his claims means that that they are debatable
  - Attacking him for undermining the election can depress turnout because it conveys that he can reject the election results.

AFL-CIO President Trumka on Labor's Role in Defending Democracy

"The lesson of our history is clear. Democracies are not, in the last analysis, protected by judges or lawyers, reporters or publishers. The survival of democracy depends on the determination of working people to defend it."

What we'll need to do:

WIN!

DEFEND!

MOBILIZE!